Arkitek Seniformasi Sdn Bhd & Ors v Abdul Aziz bin Husain (as the public officer of Pusat Pembangunan Kemahiran Sarawak (PPKS))

HIGH COURT (KUCHING) — SUIT NO KCH-22NCVC-4/1 OF 2017
STEPHEN CHUNG J
25 MAY 2018

Contract — Claims — Claim for work done — Vide a letter of engagement, defendant appointed plaintiffs to provide consultancy services for construction project — Defendant refused to settle fees — Plaintiffs filed action against defendant for fees of work done — Whether defendant did appoint second, third and fourth plaintiffs as its consultants — Whether consultancy services to be performed subject to budget constraints, approval of change of title conditions and procurement procedures — Whether there was any breach by plaintiffs in providing consultancy services — Whether plaintiffs entitled to fees charged

In the present action, the plaintiffs contended that by a letter of engagement dated 14 February 2012 ('the letter of engagement'), the defendant appointed the plaintiffs to provide consultancy services for the proposed construction of Kolej Antarabangsa Teknologi Lanjutan Sarawak ('ICATS'), Muara Tebas Land District. The plaintiffs had submitted their professional fees for work done up to contract documentation phase, but the defendant refused to settle the fees. The plaintiffs sued the defendant for the sum of RM1,904,346.98 and for penalty for late payment at the rate of 5%pa from 18 January 2017 on daily rests until full and final settlement. The defendant denied the plaintiffs' claims and pleaded that save for the appointment of the first plaintiff as the leading consultant for the consultancy services for the proposed ICATS, the defendant denied appointing or engaging the second, third and fourth plaintiffs for the proposed project and submitted that the appointment of the first plaintiff was subject to the terms as per the letter of engagement. The defendant counterclaimed against the first plaintiff for indemnity and or contribution in the event the defendant was to be held liable in respect of the second, third and fourth plaintiffs' claims against the defendant. The issues for determination were: (a) whether the defendant did appoint the second, third and fourth plaintiffs as its consultants for the ICATS project; (b) the scope of the consultancy services to be provided; (c) whether the consultancy services to be performed were subject to budget constraints, approval of change of title conditions and procurement procedures — in relation to this issue, the parties had referred to the sale and purchase agreement ('the SPA') between HDC and PPKS Ilmu Sdn Bhd in respect of the land on which ICATS was to be constructed; (d) whether there was any breach by the plaintiffs in providing the

consultancy services; and (e) whether the plaintiffs were entitled to the fees charged. A

Held:

(1) Based on the first paragraph of the letter of engagement which was plain and unambiguous, the defendant appointed the first plaintiff as its lead consultant to be assisted by the second, third and fourth plaintiffs as subconsultant. The defendant in its witness statements did not deny appointing the second, third and fourth plaintiffs as its subconsultants for the project. They did not say that the first plaintiff had appointed the second, third and fourth plaintiffs as the first plaintiff's subconsultants. They did not say that they were not the consultants or subconsultants of the defendant. These did not substantiate but contradicted the pleaded case of the defendant (see paras 12 & 14–16). B C

(2) On the scope of services, para 1.1 sets out the architectural services namely: 1.1.1 schematic design phase; 1.1.2 design development phase; 1.1.3 contract documentation phase; and 1.1.4 contract implementation and management phase. Paragraph 1.2 sets out the civil and structural engineering services, in para 1.3 the mechanical and electrical engineering services and para 1.4 the quantity surveying services. The consultancy services were set out in the above paragraphs which would be carried out in phases (see para 16). D E

(3) There was no mention of the SPA or its terms and conditions in the letter of engagement; and the plaintiffs and the defendant were not parties to the SPA. Notwithstanding that, under cll 3 and 4 of the SPA, PPKS Ilmu Sdn Bhd was required to apply, submit and to obtain the necessary approvals, and not the plaintiffs. Further, in the letter of engagement, there was no mention of any budget constraint or that the work to be carried out by the plaintiffs was subject to approval of change of the title condition or the procurement procedure. On the evidence, the plaintiffs did not breach the terms and conditions in the letter of engagement or any breach of duty as contended by the defendant but had provided the consultancy services to the defendant and had submitted their bill for their respective work done (see paras 23–24, 26 & 28). F G H

(4) The plaintiffs had billed the defendant and set out the calculations for their respective professional fee. The defendant did not challenge the bills as being unreasonable or wrong. On the balance of probabilities, the court held that the plaintiffs had proved their case against the defendant. The court therefore entered judgment for the plaintiffs against the defendant for the sum of RM1,904,346.98 with interest thereon at 4%pa from 18 January 2017 until full payment. However, the plaintiffs were not entitled to the penalty on late payment of 5%pa from 18 January 2017 on daily rests until full and final settlement because it I

was not provided for in the letter of engagement. The court further ordered the defendant to pay cost of RM30,000 to the plaintiffs jointly and to pay the allocator (see paras 31–34).

[Bahasa Malaysia summary

Dalam tindakan ini, plaintif-plaintif berhujah bahawa surat pelantikan bertarikh 14 Februari 2012 ('surat pelantikan'), defendan melantik plaintif-plaintif untuk memberikan perkhidmatan runding bagi pembinaan cadangan Kolej Antarabangsa Teknologi Lanjutan Sarawak ('ICATS'), Daerah Muara Tebas. Plaintif-plaintif telah menyerahkan fi profesional mereka untuk kerja yang telah dilakukan sehingga fasa dokumentasi kontrak, tetapi defendan enggan menyelesaikan fi tersebut. Plaintif-plaintif menyaman defendan untuk jumlah sebanyak RM1,904,346.98 dan untuk penalti bagi bayaran lambat pada kadar 5% setahun dari 18 Januari 2017 atas kadar harian sehingga penyelesaian penuh dan muktamad. Defendan menafikan tuntutan plaintif-plaintif dan memplid bahawa kecuali pelantikan plaintif pertama sebagai perunding utama untuk perkhidmatan runding bagi ICATS yang dicadangkan, defendan menafikan melantik plaintif kedua, ketiga dan keempat bagi projek yang dicadangkan dan berhujah bahawa pelantikan plaintif pertama adalah tertakluk kepada terma-terma seperti surat pelantikan. Defendan menuntut balas terhadap plaintif pertama bagi indemniti dan atau sumbangan jika defendan diputuskan bertaggungjawab berkaitan tuntutan plaintif kedua, ketiga dan keempat terhadap defendan. Isu-isu untuk penentuan adalah: (a) sama ada defendan melantik plaintif kedua, ketiga dan keempat sebagai perunding-perundingnya bagi projek ICATS; (b) skop perkhidmatan runding untuk diberikan; (c) sama ada perkhidmatan runding yang akan dilakukan adalah tertakluk kepada kekangan bajet, kelulusan penukaran syarat hakmilik dan prosedur pemerolehan — berkaitan kepada isu ini, pihak-pihak telah merujuk kepada perjanjian jual beli ('PJB') di antara HDC dan PPKS Ilmu Sdn Bhd berkaitan tanah di mana ICATS akan dibina; (d) sama ada terdapat apa-apa kemungkiran oleh plaintif-plaintif dalam memperuntukkan perkhidmatan runding tersebut; dan (e) sama ada plaintif-plaintif adalah berhak kepada fi yang dicaj.

Diputuskan:

(1) Berdasarkan perenggan pertama surat pelantikan yang mana adalah terang dan jelas, defendan melantik defendan pertama sebagai perunding utamanya dibantu oleh plaintif kedua, ketiga dan keempat sebagai sub perunding. Defendan dalam penyataan saksinya tidak menafikan melantik plaintif kedua, ketiga dan keempat sebagai sub perundingnya bagi projek tersebut. Mereka tidak menyatakan bahawa plaintif pertama telah melantik plaintif kedua, ketiga dan keempat sebagai sub perunding plaintif pertama. Mereka tidak mengatakan bahawa mereka adalah bukan perunding atau sub perunding defendan. Ini tidak menyokong

tetapi bertentangan kes yang diplidkan oleh defendan (lihat perenggan 12 & 14–16).

(2) Mengenai skop perkhidmatan, perenggan 1.1 menetapkan perkhidmatan arkitek iaitu: 1.1.1 fasa reka bentuk skema; 1.1.2 fasa pembangunan reka bentuk; 1.1.3 fasa dokumentasi kontrak; dan 1.1.4 fasa pelaksanaan dan pengurusan kontrak. Perenggan 1.2 menetapkan perkhidmatan kejuruteraan awam dan struktur, dalam perenggan 1.3 perkhidmatan kejuruteraan mekanik dan elektrik dan perenggan 1.4 perkhidmatan juruukur bahan. Perkhidmatan runding ditetapkan dalam perenggan-perenggan di atas yang mana akan dijalankan dalam berperingkat (lihat perenggan 16).

(3) Tidak terdapat sebutan mengenai PJB atau terma-terma dan syarat-syaratnya dalam surat pelantikan; dan plaintif-plaintif dan defendan bukan pihak-pihak kepada PJB. were not parties to the SPA. Walau bagaimanapun, di bawah klausa 3 dan 4 PJB PJB, PPKS Ilmu Sdn Bhd dikehendaki untuk memohon, menyerahkan dan mendapatkan kelulusan yang perlu, dan bukan plaintif-plaintif. Selanjutnya, dalam surat pelantikan, tidak terdapat subutan mengenai apa-apa kekangan bajet atau bahawa kerja akan dijalankan oleh plaintif-plaintif adalah tertakluk kepada kelulusan penukaran syarat hakmilik dan prosedur pemerolehan. Atas keterangan, plaintif-plaintif tidak memungkiri terma-terma dan syarat-syarat dalam surat pelantikan atau apa-apa kemungkiran tugas seperti yang dihujahkan oleh defendan tetapi telah memberikan perkhidmatan runding kepada defendan dan telah menyerahkan bil untuk kerja masing-masing yang telah dijalankan mereka (lihat perenggan 23–24, 26 & 28).

(4) Plaintif-plaintif telah memberi bil kepada defendan dan menyatakan pengiraan untuk fi profesional mereka masing-masing. Defendan tidak mencabar bil-bil tersebut sebagai tidak munasabh atau salah. Atas imbangan kebarangkalian, mahkamah memutuskan bahawa plaintif-plaintif telah membuktikan kes mereka terhadap defendan. Mahkamah oleh itu memsukkan penghakiman untuk plaintif-plaintif terhadap defendan bagi jumlah RM1,904,346.98 dengan faedah ke atasnya pada 4% setahun dari 18 Januari 2017 hingga pembayaran penuh. Walau bagaimanapun, plaintif-plaintif tidak berhak kepada penalti atas bayaran lewat sebanyak 5% setahun dari 18 Januari 2017 atas kadar harian sehingga penyelesaian penuh dan muktamad kerana ia tidak diruntukkan dalam surat pelantikan. Mahkamah selanjutnya memerintah defendan untuk membayar kos bersesama sebanyak RM30,000 kepada plaintif-plaintif dan untuk membayar alukator (lihat perenggan 31–34).]

Notes

For cases on claim for work done, see 3(3) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 4476–4483.

Cases referred to

Ng Hong Chai v JB Securities [2009] 2 MLJ 250; [2008] 1 LNS 528, CA (refd)
Royal Selangor Golf Club v Anglo-Oriental (Malaysia) Sdn Bhd [1990] 2 MLJ 163; [1990] 1 CLJ 995, HC (refd)

Fatmawaty bt Morshidi (Noor Azreen bt Ana with her) (Hamzah & Ong Advocates) for the plaintiffs.
Wejok Tomik (Gala and Tomik Advocates) for the defendant.

Stephen Chung J:

[1] Based on the amended statement of claim, and on evidence adduced, the first plaintiff was an architectural firm, the second plaintiff a civil and structural engineering firm, the third plaintiff a mechanical and electrical engineering firm and the fourth plaintiff a quantity surveyor firm. The defendant was the public officer of Pusat Pembangunan Kemahiran Sarawak (PPKS).

[2] The plaintiffs contended that by a letter of engagement, dated 14 February 2012, the defendant appointed the plaintiffs to provide consultancy services for the proposed construction of Kolej Antarabangsa Teknologi Lanjutan Sarawak (ICATS), Muara Tebas Land District.

[3] The plaintiffs had submitted their professional fees for work done up to contract documentation phase as follows:

Arkitek Seniformasi Sdn Bhd	RM1,036,079.55
Jurutera TCS Sdn Bhd	RM 490,774.53
Perunding MME Sdn Bhd	RM 218,122.02
PUBM Quantity Surveyors Sdn Bhd	RM 159,370.00
Total	RM1,904,346.98

[4] The plaintiffs complained that despite notices and reminders, the defendant failed and refused to settle the fees. The plaintiffs sued the defendant for the sum of RM1,904,346.98 and for penalty for late payment at the rate of 5.00%pa from 18 January 2017 on daily rests until full and final settlement.

[5] In its re-amended statement of defence and counterclaim, the defendant denied the plaintiffs' claims and pleaded that save for the appointment of the first plaintiff as the leading consultant for the consultancy services for the proposed ICATS, the defendant denied appointing or engaging the second,

third and fourth plaintiffs for the proposed project and submitted that the appointment of the first plaintiff was subject to the terms as per the letter of engagement.

[6] The defendant contended that the plaintiffs owed a duty of care and or contractual obligation (express or implied) to the defendant to exercise reasonable degree of care and skill expected of a competent and reasonably experienced consultant to advise the defendant and to carry out their services on the project diligently in order to avoid unnecessary costs or additional costs to the defendant and to ensure that the interest of the defendant was taken care of and protected by proper means.

[7] The defendant submitted that at all material times it was relying totally on the plaintiffs for their advice, technical expertise and impartiality on the proposed project but in breach of their duty of care and or contractual obligation that the plaintiffs had failed to execute their professional skill and care reasonably and diligently as expected of experienced consultants which the defendant had relied on.

[8] The defendant contended that in consequence of the breaches, the defendant has suffered special and general damages and or unnecessary costs or additional costs on the project. The defendant counterclaimed against the first plaintiff for indemnity and or contribution in the event the defendant was to be held liable in respect of the second, third, fourth plaintiffs' claims against the defendant.

[9] The issues for determination: (a) did the defendant appoint the second, third and fourth plaintiffs as its consultants for the ICATS project; (b) the scope of the consultancy services to be provided; (c) whether the consultancy services to be performed were subject to: (i) budget constraints, (ii) approval of change of title conditions; and (iii) procurement procedures; (d) was there any breach by the plaintiffs in providing the consultancy services; and (e) whether the plaintiffs were entitled to the fees charged.

[10] On the first issue, it was not in dispute that the defendant had appointed the first plaintiff as its consultant for the ICATS project. However the defendant submitted that it did not appoint the second, third and fourth plaintiffs as its consultants, instead they were appointed by the first plaintiff as the first plaintiff's subconsultants.

[11] I refer to the letter of engagement which was addressed to the first plaintiff. In the first paragraph of the letter, it reads 'We are pleased to inform you that our Corporation has agreed to appoint your firm as the Lead Consultant for the above-mentioned Project and to be assisted by the following

A sub-consultants:- a) Civil & Structural Engineer: Jurutera TCS Sdn Bhd b) Mechanical & Electrical Engineer: Perunding MME Sdn Bhd c) Quantity Surveying Services: PUBM Quality Sdn Bhd'. There was no mention of who would appoint the second, third and fourth plaintiffs to be part of the project. The question is who appointed the second, third and fourth plaintiffs?

B

[12] It should be noted that the defendant did not plead that it did not appoint the second, third and fourth plaintiffs as its subconsultants. Instead, the defendant denied appointing them for the proposed project. Reading the first paragraph, which was plain and unambiguous, the defendant appointed C the first plaintiff as its lead consultant to be assisted by the second, third and fourth plaintiffs as subconsultants. They were appointed as a team by the defendant to provide the consultancy services to the defendant for the project. It was not stated in the letter that they were the subconsultants of the first D plaintiff and to be appointed by the first plaintiffs as its subconsultants: see *Royal Selangor Golf Club v Anglo-Oriental (Malaysia) Sdn Bhd* [1990] 2 MLJ 163; [1990] 1 CLJ 995; *Ng Hong Chai v JB Securities* [2009] 2 MLJ 250; [2008] 1 LNS 528.

E **[13]** Since then the representatives of first to the fourth plaintiffs had attended meetings as consultants with representatives of the defendant including its 'public officer' Tan Sri Datuk Amar (Dr) Hj Abdul Aziz bin Dato Hj Husain (DW4) regarding the project. The defendant's witnesses testified that the first meeting was for the group to express interest to participate in the F project and the second meeting was for the consultants to present preliminary plans, drawings and preliminary estimates of probable construction costs. Based on their preliminary drawings, the preliminary estimate was more than RM89m but the defendant requested that the project design and specifications to be scaled down to RM30m. Since then there was no correspondence G between the parties that the second, third and or the fourth plaintiffs were not the consultants of the defendant or that they were appointed by the first plaintiff as the first plaintiff's subconsultants. Since then the defendant did not complain that the second, third and fourth plaintiffs were not appointed by the H defendant as its subconsultants and would not be paid by the defendant.

[14] Reading the witness statements of the defendant, including that of DW4 who was the key witness for the defendant, in their witness statements, they did not deny appointing the second, third and fourth plaintiffs as its I subconsultants for the project. They did not say that the first plaintiff had appointed the second, third and fourth plaintiffs as first plaintiff's subconsultants. They did not say that they were not the consultants or subconsultants of the defendant. These did not substantiate but contradicted the pleaded case of the defendant.

[15] The second, third and fourth plaintiffs, including the first plaintiff, had attended meetings, prepared design drawings and specifications, prepared cost estimates, and had corresponded with the relevant authorities, such as Bomba, Sesco etc, in respect of their scope of work on behalf of the defendant. They were acting on behalf of the defendant. On evidence, the defendant had appointed the first plaintiff as its lead consultants and the second, third and fourth plaintiffs as its subconsultants for the ICATS project.

[16] On the scope of services, para 1.1 sets out the architectural services namely: 1.1.1 schematic design phase; 1.1.2 design development phase; 1.1.3 contract documentation phase; and 1.1.4 contract implementation and management phase. Paragraph 1.2 sets out the civil and structural engineering services, in para 1.3 the mechanical and electrical engineering services and para 1.4 the quantity surveying services. The consultancy services were set out in the above paragraphs which would be carried out in phases.

[17] Under the schematic design phase, the first plaintiff was required to prepare preliminary sketch design, planning, design brief and the preliminary estimates of probable construction cost to a stage sufficient to enable applications to be made to the relevant authorities for siting approval, planning approval and or 'in principal' approval. Similarly, the second, third and fourth plaintiffs were required, under the relevant paragraphs in the letter, to carry out their respective scope of work such as soil and site investigation, to liaise with Sesco, Bomba and Telekom, to prepare design drawings and specifications, and preliminary cost estimates.

[18] The first plaintiff being the lead consultant was required to coordinate the work of the other consultants. PW1 testified that after several workshops and meetings the defendant instructed them to proceed with the design development stage and to complete the tender drawing within two months. On evidence, the plaintiffs had attended the meetings and provided the consultancy services to the defendant in accordance to the letter of engagement and had submitted their bills for the work done.

[19] I shall deal with the next two issues together. The defendant contended that it did not give the instruction to proceed because the defendant did not have the fund or budget to proceed with the kind of cost estimate of RM89m; that the land title was yet to be transferred to the defendant because the landowner was still the Housing Development Corp ('HDC'); and that HDC had yet to obtain approval from the relevant authorities to change the title condition for residential use to that for ICATS. DW4 testified that the intended purchase of the land from HDC for the purpose of ICATS did not materialise. It was submitted that the consultancy services to be provided by the plaintiffs were subject to these conditions being fulfilled.

A **[20]** It was submitted that the plaintiffs owed a duty of care and contractual obligation to the defendant to exercise reasonable degree of care and skill expected of a competent and reasonable experienced consultant to advise the defendant in order to avoid unnecessary costs to the defendant and to protect the interest of the defendant. It was submitted that the plaintiffs were in breach B of its duty by proceeding and continuing to carry out the work up to documentation phase without first obtaining approval from the Lands and Surveys Department on the change of land status, failing to obtain approval from the state planning authority and failing to obtain authority from the defendant to proceed with the work. It was submitted that there were no C approvals obtained, that the project did not materialise and that the plaintiffs had jumped the gun and therefore not entitled to the fees.

[21] Firstly, although the defendant pleaded and submitted that the D plaintiffs were in breach of its duty of care and in breach of its contractual obligation, the defendant did not plead and did not claim for damages for the alleged breach of duty of care and or breach of contract. Instead it only counterclaimed against the first plaintiff for an indemnity or contribution in the event it was held liable in respect of the second, third and fourth plaintiffs' E claims. The defendant must be bound by its own pleadings. These raised doubts on the allegations and veracity of its pleaded case that the defendant had suffered loss as a result of the breach of duty or breach of contractual obligation by the plaintiffs.

F **[22]** Reading para 1.1.1, although the plaintiffs were required to prepare the preliminary plans, drawings and specifications to a stage sufficient to enable applications to be made to the relevant authorities for siting approval, planning approval and or in principal approval, the letter did not set out that the plaintiffs were responsible to apply and obtain these approvals before they G could commence work or the relevant phase of work.

[23] The parties had referred to the sale and purchase agreement ('SPA') between HDC and PPKS Ilmu Sdn Bhd in respect of the land on which ICATS was to be constructed. The plaintiffs were not parties to the SPA. Similarly, H based on para 5 of the amended statement of claim, and in para 3 of its re-amended defence and counterclaim in which the defendant did not dispute the said para 5, the defendant was also not a party to the SPA. The defendant did not plead that the defendant and PPKS Ilmu Sdn Bhd were the one and same entity.

I

[24] There was no mention of the SPA or its terms and conditions in the letter of engagement dated 14 February 2012. Also, there was no mention of any budget constraint or that the work to be carried out by the plaintiffs was subject to approval of change of the title condition or the procurement

procedure. The SPA was dated 16 April 2012, two months after the defendant had appointed the plaintiffs as its consultants. Therefore the plaintiffs could not be subject to the terms and conditions set out in the SPA. Subsequent to the SPA the defendant did not produce any letter or document that the plaintiffs knew or agreed to be bound by the terms and conditions in the SPA.

[25] Although PPKS Guidelines was mentioned in the letter of engagement, the defendant did not plead and did not produce the PPKS Guidelines or that the guidelines were in respect of the procurement procedure. The defendant did not submit that the PPKS Guidelines and procurement procedure were the same. Reading the procurement procedure (exh P6), it applied during the process of procurement of materials, equipments or services by the Administration Department in PPKS in ensuring that the procurement was approved by the authorised officers. It applied to the officers of PPKS and not to the first to the fourth plaintiffs who were independent contractors. In this case PPKS had approved and appointed the first to the fourth plaintiffs as its consultants. There were no merits in the submission that the plaintiffs did not comply or abide by the procurement procedure.

[26] Notwithstanding that, reading cl 3 of the SPA, the purchaser, namely PPKS Ilmu Sdn Bhd, 'shall use its best endeavours to apply for and obtain such approval without delay and unless such approval is obtained within six (6) months from the date hereof this Agreement shall at the expiration of the said period or such other period as the parties hereto may hereafter mutually agree to in writing become null and void and all monies paid shall hereunder shall forthwith be refunded to the Purchaser without any interest or costs'. Further, under cl 4 of the SPA, the purchaser was required to cause such plans, drawings and specifications to be prepared and to submit them to the relevant authorities for approval for the construction of its campus. Therefore PPKS Ilmu Sdn Bhd was required to apply, submit and to obtain the necessary approvals, and not the plaintiffs. These contradicted the contentions of the defendant.

[27] The defendant appointed the plaintiffs as its consultants for the project via its letter of engagement dated 14 February 2012. In August 2012 the plaintiffs had prepared and submitted the drawings and specifications for the proposed ICATS project. The evidence showed that by a letter dated 22 May 2012, the second plaintiff nominated Geospec Sdn Bhd to carry out soil investigation for the project and this was confirmed by a letter dated 11 October 2012 issued by the defendant to Geospec Sdn Bhd. Up to this date there was no complaint by the defendant that the plaintiffs were not the consultants of the defendant or that they should not proceed with the consultancy services. This was after the SPA dated 16 April 2012. These again contradicted the contention of the defendant.

[28] Apart from the letter of engagement, which did not set out the 'so-called preconditions', the parties did not produce or exhibit any other letter or document setting out the terms, conditions or giving instructions on when the works were be commenced or done. These instructions, if any, were given and agreed to during the meetings. These would be given verbally. The defendant did not plead that it relied on these verbal instructions or that the plaintiffs had contravened or breached these. The parties did not produce any minutes of the meetings or correspondence to confirm these. If there were such instructions, the defendant would have produced them to substantiate its allegations. On the evidence, the consultancy services to be provided by the plaintiffs were not subject to budget constraint, approval of change of title condition and or procurement procedure as contended by the defendant.

[29] Although the SPA was signed, it was rescinded via a deed mutual rescission and release dated 25 November 2014 and the ICATS project on the land did not materialise. On evidence, the plaintiffs did not breach the terms and conditions of the letter of engagement or any breach of duty as contended by the defendant but had provided the consultancy services to the defendant and had submitted their bills for their respective work done.

[30] In respect of the bills for professional charges, para 2.1 of the letter of engagement states that the fee payable 'shall be 7.2% of the total actual construction cost of the project excluding land cost, survey cost and capital contribution to relevant authorities'. Paragraph 2.3 set out the mode of payment whereas para 2.4 set out the sharing portion of the fees for consultant. As stated above, the ICATS project was not built and there was no actual construction cost incurred. What were the reasonable fees to be charged?

[31] By a letter dated 25 September 2013, the first plaintiff had billed the defendant for work done for schematic design phase, design development phase and contract documentation phase and set out the calculations for the professional fee based on 'architectural consultancy fee calculated based on stages of payment' at 3.8% ie RM3,026,110.05 which amounted to RM977,433.54 plus GST which aggregated to RM1,036,079.55. Similarly the second to the fourth plaintiffs had billed the defendant and set out the calculations for their respective professional fee.

[32] Since then the defendant did not challenge the bills as being unreasonable or wrong. During the trial the defendant did not cross-examine or challenge the witnesses of the plaintiffs on their calculations or quantum of their fees charged. The defendant did not adduce any evidence to the contrary that the calculations or quantum were wrong or too high or unreasonable or illogical.

[33] On a balance of probabilities, the plaintiffs have proved their case against the defendant. Judgment is entered for the plaintiffs against the defendant for the sum of RM1,904,346.98 with interest thereon at 4%pa from 18 January 2017 until full payment. However the plaintiffs were not entitled to the penalty on late payment of 5%pa from 18 January 2017 on daily rest until full and final settlement because it was not provided for in the letter of engagement.

[34] Based on the pleadings, issues for trial, number of witnesses who testified, length of cross-examinations, number of documents, and the submissions, the defendant shall pay cost of RM30,000 to the plaintiffs jointly and to pay the allocator.

Order accordingly.

Reported by Dzulqarnain Ab Fatar